

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of:)
)
Martha Wright, Dorothy Wade, Annette Wade,)
Ethel Peoples, Mattie Lucas, Laurie Nelson)
Winston Bliss, Sheila Taylor, Gaffney &)
Schember, M. Elizabeth Kent, Katharine Goray,)
Ulandis Forte, Charles Wade, Earl Peoples,)
Darrell Nelson, Melvin Taylor, Jackie Lucas,)
Peter Bliss, David Hernandez, Lisa Hernandez,)
and Vendella F. Oura)

**Petition for Rulemaking or, in the
Alternative, Petition to Address
Referral Issues in a Pending
Rulemaking**

CC Docket 96-128

**COMMENTS OF
THE OHIO DEPARTMENT OF REHABILITATION AND CORRECTION**

The Ohio Department of Rehabilitation and Correction ("ODRC") by its attorney, Stephen Young, submits these written comments in opposition to the Wright Petition For Rule Making or, in the alternative, Petition to Address Referral Issues In A Pending Rulemaking ("Wright Petition") with the Federal Communications Commission ("Commission"). In the *Wright Petition*, Petitioners request that the Commission initiate a notice and comment rulemaking proceeding to consider precluding exclusive service arrangements and other restrictions on inmate calling options. Specifically, "Petitioners request that the Commission prohibit exclusive inmate calling service agreements and collect call-only restrictions at privately-administered prisons and require such facilities to permit multiple long distance carriers to interconnect with prison telephone systems."

The Commission's decision on the Wright Petition could fundamentally affect the way the ODRC conducts its Inmate Call-Out Program ("ICOP"). As a result the ODRC clearly has the requisite standing to participate in this proceeding.

ODRC'S TELEPHONE SYSTEM, GENERALLY

ODRC administers thirty-one (31) correctional institutions plus **two privately operated and managed institutions**, through out the State of Ohio, housing approximately 44,000 inmates.

In order to assist inmates' communication and contacts with their families, friends or attorneys, ODRC operates in all thirty-three (33) correctional institutions the ICOP,

pursuant to ODRC policies. Inmates are informed of such policies by an Inmate Handbook and during orientation.

It is the policy of the ODRC to ensure that all ODRC institutions, **including the two privately operated and managed institutions**, have the ICOP in place for all general population inmates in order to provide them with reasonable and equitable access to telephones for the purpose of maintaining ties with their family and home community. The ICOP is operated in the following manner:

1. Enhance an institution's security;
2. Enhance the safety of staff, inmates and public; and
3. Reduce the occurrence of criminal activities or any other activities that could be considered a threat to the orderly operation of the ODRC.

The exclusive agreement to provide the telephone service for the ICOP is presently held by MCI WorldCom Communications, Inc. ("Agreement"). The policies, together with the Agreement, establish the parameters for the ICOP. Generally, during the hours of operation of the ICOP at a given facility, each inmate may place collect-only calls to anyone who will accept them unless the number is blocked or restricted. All such calls are subject to monitoring. Inmates consent to such monitoring as a condition of being allowed to use the telephones. Monitoring ensures that the telephone privilege is not being abused in a manner that is a violation of law or detrimental to the security to the institution, employees or other inmates.

ODRC carries out such monitoring through equipment provided by the Agreement. It should be noted that the ICOP, as it is currently structured, has been an enormous source of intelligence information for ODRC regarding inmates who continue to engage in illegal activities (e.g., violations of institutional rules of conduct and crimes). As explained in the attached expert affidavit of Richard L. Swain (Swain Affidavit), at paragraphs 11-14, the ODRC continues to use the resources available to it through the ICOP, often in conjunction with other law enforcement agencies, to discipline or prosecute inmates involved in criminal activities both within correctional institutions and in the community.

BENEFITS OF A SINGLE, SECURE, INMATE CALLING SERVICES PLATFORM

The parameters for the ICOP were developed over a number of years and represent an appropriate balancing between the legitimate security, control and monitoring needs of ODRC and the goals of fostering inmate contacts with family and friends to aide in their rehabilitation. As discussed herein, an exclusive agreement with a single provider assures consistent quality both in service provided and in security measures. It is clear from the Swain Affidavit that requiring prison authorities to deal with multiple providers does not provide the type of assurances the ODRC needs to protect the ODRC's and the public's interests.

If state departments of correction with privately-administered prisons, like ODRC, would be required by the Commission to permit multiple long distance carriers, to interconnect with such prisons inmate telephone systems in the manner described by Mr. Douglas A.

Dawson in his affidavit in support of the Wright Petition (hereafter referred to as the Dawson Affidavit), these departments will lose a significant degree of control over the design, selection, and operation of a critical program and its ability to receive needed intelligence will be compromised as demonstrated in the Swain Affidavit.

The extensive technological proposal by Mr. Dawson professes to be the ideal operation for all prisons in the United States. But, Mr. Dawson's experience is mainly in modest size correctional facilities such as county and city jails throughout the country and some privately owned prisons, which are operated, substantially different from large state prisons, as the Swain Affidavit confirms. Each state department of corrections and private corrections management companies all have different correctional requirements for inmate telephone usage and in most cases are approached in different ways based on, the laws of the State, class of security for the institution, budget provided to the correctional system, availability of telecommunication services in the local area of the correctional facility and the number and experience of the telecommunications companies available and willing to supply the services to a prison.

In light of the Swain Affidavit, if correctional systems were required by the Commission to accommodate inmates choosing among multiple carriers and choosing between collect calling and debit card options, it would be surrendering its duty to protect and control the inmates in its custody.

There are many legitimate reasons demonstrated in the Swain Affidavit, that collect calling may be the only means of providing inmate phone service. For ODRC, this is the only technology that allows the level of security needed to ensure that inmates are not conducting illegal businesses, are not able to bypass blocked numbers, are not making harassing calls, and are not using the telephone for purposes other than legitimate interpersonal contact. Debit card options raise potential problems among inmates when some have prepaid debit cards and most inmates do not. Furthermore, for the ODRC to institute the changes requested by the petitioners the cost of each call could increase due to the need for additional personnel to manage and oversee the day to day operation of a prepaid calling system. This would either be shouldered by the taxpayers if additional state employees are hired or by the telecommunication company if they were to employ the needed staff.

The Dawson Affidavit proposes that multiple carriers offering competitive long distance services to the inmates would interconnect with the underlying carrier's prison telephone system (including switch and software, phones, management control system, and other required components of the prison calling system.) It further proposes that the interconnecting carriers based on the costs of installing and operating the prison system could compensate the service provider.

Mr. Dawson is asserting that security controls prison authorities have spent years in developing can be protected by imposing new and additional responsibilities on the underlying carrier, without exposing the interconnecting carriers to any of the contractual obligations or potential liabilities. In other words, Mr. Dawson wants the interconnecting carriers to help pay for the investments made by the underlying carrier, without assuming the burdens. As discussed below, the company selected to provide a

secure calling system has a contractual obligation to maintain the security of communications, backed up with severe penalties for failing to do so. In contrast, the interconnecting carriers would not be contractually obligated to carry out any duties to provide the necessary security and technical requirements needed for an inmate calling services program.

ODRC'S CONTRACT WITH WORLDCOM

The ICOP was the result of a careful balancing of the desire to provide inmates with telephone access to friends and family against the need to keep inmates in a safe and secure environment and the need to protect the public from inmate criminal activity. To carry out the ICOP, ODRC entered into an Agreement with MCI WorldCom Communications, Inc., as the sole provider of telephone services from ODRC institutions. WorldCom received a contract after submitting a successful proposal in response to a competitive bidding process. The current Agreement runs through February 25, 2005. On behalf of ODRC, I drafted the competitive instrument, negotiated and drafted the Agreement, and continue to handle legal issues relating to the Agreement.

Under the Agreement, inmates are unable to place their calls through any other collect call service provider. The exclusive Agreement with a single provider to operate the ICOP assures that ODRC has consistent quality both in service provided and in security measures, as the Swain Affidavit explains. WorldCom provides comprehensive managed telephone service for the ICOP. WorldCom processes calls placed by inmates through the ICOP and has installed approximately six million dollars worth of equipment to do the program.

It is clear from the Swain Affidavit that, given the special equipment involved in providing inmate phone calls, a single provider, collect-call only system is best suited to meet ODRC's security needs. Thus, under the Agreement, all ICOP calls must be delivered to the called party as a zero +, collect call only. The single provider allows ODRC to incorporate complex security features (e.g., how inmate dials, the number of telephones per inmate, the location of the telephones, the type of telephone, voice prompts, how the systems are integrated with ODRC's systems and procedures, call monitoring, access to billing name and address data (BNA), call blocking, the hours of operation, the prohibition of third party calling and call forwarding) into the ICOP. Under the Agreement, WorldCom is obligated to maintain the ICOP as secure as possible. To guarantee this obligation, WorldCom posted a five million dollar performance bond. The collect-call only system provides both maximum access to telephone service for the inmate population, and the security controls necessary to ODRC.

Thus, the petitioners characterizing such exclusive agreements as lacking "any justification" is just not the case. (Wright Petition at page 21.)

Additionally, the Agreement establishes the rates charged by the recipient of calls placed by inmates and WorldCom submits the rates to the Public Service Commission, which then becomes the filed tariff. WorldCom pays ODRC a fee each month in the form of revenue commissions' checks for each of the accepted, completed calls

processed. Pursuant to section 5120.132 of the Ohio Revised Code, those commissions are deposited in the prisoner program funds in the state treasury. The money in that fund shall only be used for programming operated by the ODRC for the benefit of its inmates.

Thus, the petitioners characterizing the “current use of commissions as a general slush fund” are scurrilous. (Wright Petition at pages 21-22.) The Ohio General Assembly and ODRC are involved in determining the use of those funds. The Commission should not ignore these important state interests. The Commission should not interfere or preempt ODRC’s exercise of its sovereign authority to decide the use of the funds.

Based on that characterization, the petitioners request the Commission to “prohibit the imposition and payment of commissions by inmate telephone service providers except to the extent that the commissions cover legitimate costs directly incurred by the prison administrators in implementing and carrying out legitimate security and other penological goals in connection with the provision of inmate telephone services.” (Wright Petition at page 22.) The petitioners seek to create a tremendous burden on prison administrators to account for the costs associated with monitoring phone calls, security costs in effecting calls for inmates who do not have direct access to phones, physical plant costs for the placement of the equipment and other security related expenses. The petitioners also conveniently ignore the fact that service providers incur significant additional costs in meeting the security requirements imposed by prison administrators.

LEGAL ARGUMENT

ODRC has a contractual relationship, which was designed specifically to address ODRC’s security concerns. The Swain Affidavit confirms that a single provider system is an important feature in monitoring and controlling inmate activity. Commission rules that ensure consumers are able to reach their preferred long distance carriers from public telephones served by operator service providers do not apply to “inmate only” telephones. This exemption for correctional facilities from the Commission rules is due to the exceptional set of circumstances under which “inmate only” telephone service is provided, including the above-referenced complex security features. These features certainly influence rates for collect calls from prisons.

ODRC only allows inmates to make collect calls from “inmate only” telephones, and they do not have a right to access their preferred carrier. When an ODRC inmate makes a collect call, WorldCom must identify itself to the person receiving the inmate’s call before connecting any interstate, domestic interexchange telephone call. WorldCom must disclose immediately thereafter how the receiving party may obtain rate quotations before connecting. Additionally, WorldCom permits that party to terminate the telephone call at no charge before the call is connected. This protocol is required by 47 C.F.R. sec. 64.710. The Commission has, through such disclosure requirements, taken steps to allow consumers to make informed judgments. It has properly recognized that the FCC is not in the business of being a prison administrator and struck the appropriate, regulatory balance that accommodates the realities of prison operations

and management. The Commission has recognized the unique circumstances surrounding ODRC's provision of the ICOP.

The Commission recognizes that contracts between operator service providers of inmate operator services and state departments of corrections can be with a single exclusive company. In the Matter of Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, 11 FCC Rcd. 4532, 4532 (1996), the Commission concluded that correctional agencies were not subject to regulations which apply to those who make telephones available to the public. As a result, callers from prisons "are generally unable to select the carrier of their choice; ordinarily they are limited to the carrier selected by the prison." *Id.*, 11 FCC Rcd. 7301. See also Inmate Services Order, 11 FCC Rcd. 7362, para. 25 and 26 (1996) wherein the Commission has explicitly stated that the regulatory model for prison payphone service should not also apply to payphones for the general public.

The Commission reiterated that exclusive agreements are necessary to correctional systems due to the unique security considerations thereby precluding inmates from choosing among multiple carriers and constraining rates for inmate calling services. In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 17 FCC Rcd. 3248, 3282 (Feb. 21, 2002).

We recognize that the provision of inmate calling services implicates important security concerns and, therefore, involves costs unique to the prison environment . . . A prison payphone provider typically is contractually obligated to monitor and control inmate calling to prevent abuse and ongoing criminal activity and to assist in criminal investigations. Correctional facilities must balance the laudable goal of making calling services available to inmates at reasonable rates, so that they may contact their families and attorneys, with necessary security measures and costs related to those measures. For this reason, most prisons and jails contract with a single carrier to provide payphone service and perform associated security functions. Thus, legitimate security considerations preclude reliance on competitive choices, and the resulting market forces, to constrain rates for inmate calling.

Id., 17 FCC Rcd. at 3276 (emphasis added).

A private business such as the Corrections Corporation of America ("CCA") should not be the vehicle to enable multiple long distance carriers to interfere with the safe and secure operation of state prisons even if only limited to privately administered prisons. To permit the action requested by the petitioner, would set a dangerous precedent that would impact state corrections systems that endeavor to effectively manage their operation.

SCOPE OF THE WRIGHT PETITION

The petitioners have limited the scope of their petition to inmate telephone services at private prison facilities. (Wright Petition page 4, footnote 4.) However, the petitioners

have conveniently failed to make a distinction between private prison facilities that are owned and operated by private companies and private prison facilities that are merely operated by private companies when such facilities are publicly owned. As stated herein, the ODRC has two facilities that fall within that latter category. The Wright case only involves one private prison administrator, the CCA and focuses largely on inmate calling at three specific prisons owned and operated by CCA. Therefore, CCA's three facilities fall within that former category. The petitioners probably hope that the Commission would not make that distinction in any rule it might adopt in this proceeding.

Petitioners' state that the Wright Petition is so limited "in order to avoid any possible conflict with state laws regulating the administration of publicly administered correctional facilities." (Wright Petition page 4, footnote 4.) This assertion is an attempt by petitioners to make a distinction between private prison facilities, but such a distinction is without a difference, at least as it applies to Ohio. One of the three CCA facilities mentioned above is the Northeast Ohio Correction Center ("NOCC") in Youngstown, Ohio. It is important to note that State of Ohio inmates are not housed in NOCC. Nevertheless, the operation of NOCC is regulated and governed by Section 9.07 of the Ohio Revised Code, which is Attachment A. Therefore, the relief requested by the Wright Petition could possibly conflict with that state law. Section 9.06 of the Ohio Revised Code, which is Attachment B, authorizes the ODRC and counties and municipal corporations to the extent authorized by other specified provisions of the Revised Code (i.e., secs. 307.93, 341.35, 753.03, and 753.15), to contract for the private operation and management of a correctional facility. Section 9.06 contains numerous criteria governing the contract and the operation and management of the facility. That criterion is similar or identical, to section 9.07. Thus, ODRC hopes that the scope of the Wright Petition and the relief sought is not intended to conflict with those state laws regulating the administration of publicly administered correctional facilities in Ohio.

The scope of the Wright Petition as limited by its expressed terms at page 4, footnote 4, is the most significant concern of ODRC. The ODRC has inmate telephone services at its two private prison facilities. The scope of the Wright Petition clearly intends to include these two facilities. However, pursuant to section 9.06 (C) (7) of the Revised Code, which governs and regulates the administration of those facilities, there are specific duties and responsibilities of the ODRC that are not delegable to the private prison administrator. These non-delegable duties include, but are not limited to, contracting for local and long distance telephone services for inmates or receiving commissions from such services at those facilities. Consequently, the scope of the Wright Petition is irreconcilable with that state law.

More importantly, the ODRC is authorized under that state law to enter into contracts for the provision of inmate telephone service, which designates ODRC as the instrument of the State with regard to inmate telephone service. ODRC's decision to rely on a single provider of inmate calling services is therefore an exercise of its sovereign authority in the context of correctional facilities. There is no authority to interfere or preempt this decision. However, once again, even this contention is at odds with the scope of the Wright Petition at page 4, footnote 4, because "Petitioners do not concede ... that state

laws or regulations governing the administration of publicly administered correctional facilities could not be preempted by this Commission.”

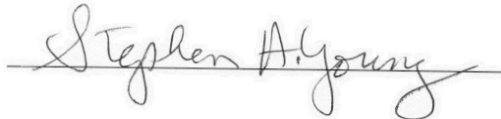
The Wright Petition’s so called limited scope leads ODRC to believe that it is advocating the Commission to not make any distinctions in Inmate Payphone Rulemaking as it relates to private and public administrators providing inmate telephone service.

CONCLUSION

The Wright Petition under the banner of “competition” wants to jeopardize the legitimate and established security protections applicable to providing inmates with telephone services. The Commission should continue to acknowledge the great deference afforded departments of corrections in setting prison policies, including restrictions of inmate payphones usage that are the subject of Wright’s Petition.

For the foregoing reasons, ODRC respectfully requests that the Commission dismiss the Wright Petition for Rulemaking, or in the alternative, deny the relief requested.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen A. Young". The signature is written in dark ink and is positioned above the printed name and title.

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In the Matter of:

CC Docket 96-128

AFFIDAVIT OF RICHARD L. SWAIN

STATE OF OHIO
COUNTY OF FRANKLIN: ss

Richard L. Swain, being duly sworn, deposes and says:

I. INTRODUCTION

1. My name is Richard L. Swain and I am the Telecommunications Manager for the Ohio Department of Rehabilitation and Correction (ODRC), 970 Freeway Drive, Columbus, Ohio 43229. ODRC houses approximately 44,000 inmates and employs 14,363 staff in 31 ODRC managed correctional institutions. ODRC also has two privately operated and managed institutions. Each institution has an EPABX for administrative telecommunication and a separate inmate telephone system comprised of call control, call accounting and monitoring equipment. I have been employed by ODRC since July 16, 1990 and in the current position since June 11, 1995. My duties require assisting in the design, purchasing and implementation of telephone, radio and digital data telecommunications systems and the oversight of the maintenance and operation.

II. PURPOSE OF THIS TESTIMONY

2. In this affidavit, I have been asked to examine and comment on the proposals as set forth in the affidavit of Douglas Dawson (Dawson Affidavit) in support of the Wright Petition. In brief, in this affidavit, I will: a) demonstrate the unreasonableness of opening inmate calling services to competition, so that inmates have a choice of carriers; b) demonstrate the justifications for prison administrators not to allow debit cards

or debit account calling or for service providers not to offer debit card or debit account calling; and c) discuss the various penological requirements that would not be satisfied by a prison calling system if access to that system was opened to competition.

3. Generally, the Dawson Affidavit proposes to add multiple carriers and/or debit/prepaid to the prison telephone system to reduce the cost of calls to the inmates' friends and families. That proposal may instead reduce competition and consequently drive up the cost of such calls.

III. MULTIPLE CARRIERS

4. Adding multiple carriers to a prison will give the inmates the choice of carriers, but may not be cost effective in the long run to the party who is paying for the collect call and the carriers. From a technological standpoint, high-technology call control equipment will be required to make the necessary routing of the calls and payments made for any telecommunication line or T-1 PRI lease fees. However, if a carrier doesn't offer the lowest cost per call, the traffic is lost. From a maintenance perspective, workload for ODRC staff and the contracted equipment provider will increase. After a period of time, the carriers would pull out of the market because they cannot recover their investment in the system, consequently driving up the cost of calls without competition. Additionally, the size and configuration of the switchgear installed by the equipment provider would be difficult to determine and would ultimately be the source of a losing investment over a period of time due to the change in the number of participating telecommunication companies.

IV. DEBIT/PREPAID CALLING

5. The Dawson Affidavit proposes a debit/prepaid system used by multiple carriers to lower the cost of the calls. Again, that system will have the consequence of limiting competition and, in the long run, raising prices of calls.

6. The Dawson Affidavit ignores the administrative burden placed upon the correctional institutions to maintain accounts for inmates. Debit systems require more day-to-day maintenance than collect systems. For example, the ODRC has at least two full-time inmate account administrators at the large majority of its 31 publicly operated facilities to manually process/manage the inmate accounts. Each debit phone call would have to be checked against the inmate's account to ensure that sufficient funds exist to place the call. The ODRC would be required to be the "bank," collecting money for the calls and paying multiple carriers for the service. Furthermore, ODRC does not maintain a centralized banking account. Inmates are routinely moved from prison to prison, and their account must move with them. Staff ensures that the accounts are moved and the inmate funds are available for the inmates' use. However, inmates must typically wait several days to have access to their account after such a transfer.

7. The ODRC would also be required to handle inmate complaints, refunds/credits and disconnect issues that sole source providers manage through customer service. Dawson's proposal will cause major confusion with regard to customer

service issues. The sole source provider is able to route all customer services, both from the recipient of the call and from the ODRC, to one customer service center that specializes in handling inmate calls. The provider is able to reduce customer confusion, offer efficient resolution of customer problems, and service the repair of the pay phones the inmates use. If you add in multiple carriers, customers will have to direct their questions to several companies depending on how the inmate attempted to utilize their lines, thus, leading to customer frustration.

8. The Dawson Affidavit assumes that debit calls are inherently cheaper to the provider and, therefore, all prisons should allow debit calls. The consumers that pay their collect call bills would take advantage of a debit program; however, fraudulent consumers that avoid collect call bills have no incentive to send money to the inmate for debit calls. For instance, inmates use "burnout phones" that are set up, usually in the local calling area of the prison, to either make three-way telephone calls that will circumvent the call accounting system installed at the institution, to obtain a long-distance call for the price of a local call, or even a free call. These telephones will be installed using an assumed or phony name and will be used heavily until the telephone service provider discovers that the long-distance or local bill is not being paid. At this point, the telephone is turned off and a new telephone with a new name and/or address is established and the cycle goes on. Thus, bad debt is not reduced for the provider.

V. PENOLOGICAL REQUIREMENTS OF PRISON CALLING SYSTEM

9. Within the prison system, inmates teach other inmates how to commit crimes and, unfortunately, they refine their ability to be successful without being detected. The primary reason that inmate-only telephones systems require the high technology security systems to be installed with call routing and switching equipment is due to a large majority of crimes being committed by inmates involving the use of a telephone. The crimes that inmates favor usually include smuggling contraband into the institution (e.g., drugs and money); attempting to commit telecommunications fraud; identity theft; or threatening/harassing victims, jurors, judges, and other public officials. With the large number of inmates assigned to Ohio prisons, ranging from 1,500 inmates in small prisons to 2,500 inmates in large prisons, and the typical one staff member assigned to monitor the inmate telephone systems, the chance of detecting most of the criminal activity over the telephone system is minimal.

10. Under Dawson's proposal, who claims responsibility for preventing such harassing calls? Currently the sole source provider has such responsibilities to block and deal with unwanted calls. With the Dawson proposal, any of the carriers can blame the other carrier for not blocking the unwanted calls, thus causing stress on the party who is being harassed by the inmate.

11. Some issues in Dawson's proposed system will fall directly on the shoulders of the ODRC investigative staff. ODRC's contract provider reported that it had over 3,500 suspected cases of telecommunication fraud during calendar year 2003. During that time, ODRC issued 84 subpoenas for telephone records or information to telecommunication companies that did not have a contract with ODRC. These companies only responded to 48 of these subpoenas. Because ODRC did not receive the information requested, the

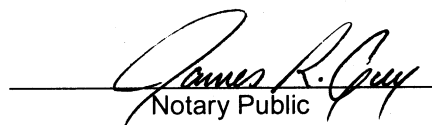
remaining investigations are still open and incomplete, with no one being held responsible for the acts committed. If ODRC was forced to open each of its 31 publicly-operated prisons, or even only the two privately-managed prisons, to permit other telecommunication companies access for the purpose of competition without first requiring them to contract with ODRC, control of gaining this type of information would be multiplied by the number of companies regularly being used by the inmates. If ODRC is not certain what carrier the call was carried on and how that company bills their calls, then ODRC will need to subpoena several telecommunication carriers, not knowing if the calls were routed to their network or to another carrier's network. This could cause unwanted delays in gathering data and evidence. In some life or death situations, it is essential that such information be accessed in a timely fashion in order to maintain public and institution safety.

12. These issues would be compounded if the person receiving the calls was committing fraud and ODRC was unable to identify where the call is going or being routed. That person could expand their fraud to several companies, thus increasing the fraud from maybe hundreds of dollars to thousands of dollars.


RICHARD L. SWAIN

STATE OF OHIO
CITY OF COLUMBUS

Sworn to and before me this 5th day of March, 2004


Notary Public
JAMES R. GUY
OHIO LICENSED ATTORNEY
MY TERM HAS NO EXPIRATION

ATTACHMENT A

§ 9.07. Entities authorized to operate correctional facility housing out-of-state prisoners; requirements for operation.

(A) As used in this section:

(1) "Deadly weapon" has the same meaning as in **section 2923.11** of the Revised Code.

(2) "Governing authority of a local public entity" means whichever of the following is applicable:

(a) For a county, the board of county commissioners of the county;

(b) For a municipal corporation, the legislative authority of the municipal corporation;

(c) For a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations, all boards of county commissioners and legislative authorities of all of the counties and municipal corporations that combined to form a local public entity for purposes of this section.

(3) "Local public entity" means a county, a municipal corporation, a combination of counties, a combination of municipal corporations, or a combination of one or more counties and one or more municipal corporations.

(4) "Non-contracting political subdivision" means any political subdivision to which all of the following apply:

(a) A correctional facility for the housing of out-of-state prisoners in this state is or will be located in the political subdivision.

(b) The correctional facility described in division (A)(4)(a) of this section is being operated and managed, or will be operated and managed, by a local public entity or a private contractor pursuant to a contract entered into prior to March 17, 1998, or a contract entered into on or after March 17, 1998, under this section.

(c) The political subdivision is not a party to the contract described in division (A)(4)(b) of this section for the management and operation of the correctional facility.

(5) "Out-of-state jurisdiction" means the United States, any state other than this state, and any political subdivision or other jurisdiction located in a state other than this state.

(6) "Out-of-state prisoner" means a person who is convicted of a crime in another state or under the laws of the United States or who is found under the laws of another state or of the United States to be a delinquent child or the substantially equivalent designation.

(7) "Private contractor" means either of the following:

(a) A person who, on or after March 17, 1998, enters into a contract under this section with a local public entity to operate and manage a correctional facility in this state for out-of-state prisoners.

(b) A person who, pursuant to a contract with a local public entity entered into prior to March 17, 1998, operates and manages on March 17, 1998, a correctional facility in this state for housing out-of-state prisoners.

(B) Subject to division (I) of this section, the only entities other than this state that are authorized to operate a correctional facility to house out-of-state prisoners in this state are a local public entity that operates a correctional facility pursuant to this section or a private contractor that operates a correctional facility pursuant to this section under a contract with a local public entity.

Subject to division (I) of this section, a private entity may operate a correctional facility in this state for the housing of out-of-state prisoners only if the private entity is a private contractor that enters into a contract that comports with division (D) of this section with a local public entity for the management and operation of the correctional facility.

(C) (1) Except as provided in this division, on and after March 17, 1998, a local public entity shall not enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in this state. On and after March 17, 1998, a local public entity may enter into a contract with an out-of-state jurisdiction to house out-of-state prisoners in a correctional facility in this state only if the local public entity and the out-of-state jurisdiction with which the local public entity intends to contract jointly submit to the department of rehabilitation and correction a statement that certifies the correctional facility's intended use, intended prisoner population, and custody level, and the department reviews and comments upon the plans for the design or renovation of the correctional facility regarding their suitability for the intended prisoner population specified in the submitted statement.

(2) If a local public entity and an out-of-state jurisdiction enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, in addition to any other provisions it contains, the contract shall include whichever of the following provisions is applicable:

(a) If a private contractor will operate the facility in question pursuant to a contract entered into in accordance with division (D) of this section, a requirement that, if the facility is closed or ceases to operate for any reason and if the conversion plan described in division (D)(16) of this section is not complied with, the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners;

(b) If a private contractor will not operate the facility in question pursuant to a contract entered into in accordance with division (D) of this section, a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall include, but is not limited to, provisions that specify whether the local public entity or the out-of-state jurisdiction will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(3) If a local public entity and an out-of-state jurisdiction intend to enter into a contract to house out-of-state prisoners in a correctional facility in this state as authorized under division (C)(1) of this section, or if a local public entity and a private contractor intend to enter into a contract pursuant to division (D) of this section for the private contractor's management and operation of a correctional facility in this state to house out-of-state prisoners, prior to entering into the contract the local public entity and the out-of-state jurisdiction, or the local public entity and the private contractor, whichever is applicable, shall conduct a public hearing in accordance with this division, and, prior to entering into the contract, the governing authority of the local public entity in which the facility is or will be located shall authorize the location and operation of the facility. The hearing shall be conducted at a location within the municipal corporation or township in which the facility is or will be located. At least one week prior to conducting the hearing, the local public entity and the out-of-state jurisdiction or private contractor with the duty to conduct the hearing shall cause notice of the date, time, and place of the hearing to be made by publication in the newspaper with the largest general circulation in the county in which the municipal corporation or township is located. The notice shall be of a sufficient size that it covers at least one-quarter of a page of the newspaper in which it is published. This division applies to a private contractor that, pursuant to the requirement set forth in division (I) of this section, is required to enter into a contract under division (D) of this section.

(D) Subject to division (I) of this section, on and after March 17, 1998, if a local public entity enters into a contract with a private contractor for the management and operation of a correctional facility in this state to house out-of-state prisoners, the contract, at a minimum, shall include all of the following provisions:

(1) A requirement that the private contractor seek and obtain accreditation from the American correctional association for the correctional facility within two years after accepting the first out-of-state prisoner at the correctional facility under the contract and that it maintain that accreditation for the term of the contract;

(2) A requirement that the private contractor comply with all applicable laws, rules, or regulations of the government of this state, political subdivisions of this state, and the United States, including, but not limited to, all sanitation, food service, safety, and health regulations;

(3) A requirement that the private contractor send copies of reports of inspections completed by appropriate authorities regarding compliance with laws, rules, and regulations of the type described in division (D)(2) of this section to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located;

(4) A requirement that the private contractor report to the local law enforcement agencies with jurisdiction over the place at which the correctional facility is located, for investigation, all criminal offenses or delinquent acts that are committed in or on the grounds of, or otherwise in connection with, the correctional facility and report to the department of rehabilitation and correction all disturbances at the facility;

(5) A requirement that the private contractor immediately report all escapes from the facility, and the apprehension of all escapees, by telephone and in writing to the department of rehabilitation and correction, to all local law enforcement agencies with jurisdiction over the place at which the facility is located, to the state highway patrol, to the prosecuting attorney of the county in which the facility is located, and to a daily newspaper having general circulation in the county in which the facility is located. The written notice may be by either facsimile transmission or mail. A failure to comply with this requirement is a violation of **section 2921.22** of the Revised Code.

(6) A requirement that the private contractor provide a written report to the director of rehabilitation and correction or the director's designee and to the governing authority of the local public entity in which the correctional facility is located of all unusual incidents occurring at the correctional facility. The private contractor shall report the incidents in accordance with the incident reporting rules that, at the time of the incident, are applicable to state correctional facilities for similar incidents occurring at state correctional facilities.

(7) A requirement that the private contractor provide internal and perimeter security to protect the public, staff members of the correctional facility, and prisoners in the correctional facility;

(8) A requirement that the correctional facility be staffed at all times with a staffing pattern that is adequate to ensure supervision of inmates and maintenance of security within the correctional facility and to provide for appropriate programs, transportation, security, and other operational needs. In determining security needs for the correctional facility, the private contractor and the contract requirements shall fully take into account all relevant factors, including, but not limited to, the proximity of the facility to neighborhoods and schools.

(9) A requirement that the private contractor provide an adequate policy of insurance that satisfies the requirements set forth in division (D) of **section 9.06** of the Revised Code regarding contractors who operate and manage a facility under that section, and that the private contractor indemnify and hold harmless the state, its officers, agents, and employees, and any local public entity in the state with jurisdiction over the place at which the correctional facility is located or that owns the correctional facility, reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and reimburse any local government entity of that nature for its costs in defending the local government entity, in the manner described in division (D) of that section regarding contractors who operate and manage a facility under that section;

(10) A requirement that the private contractor adopt for prisoners housed in the correctional facility the security classification system and schedule adopted by the department of rehabilitation and correction under **section 5145.03** of the Revised Code, classify in accordance with the system and schedule each prisoner housed in the facility, and house all prisoners in the facility in accordance with their classification under this division;

(11) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner in relation to whom any of the following applies:

(a) The private entity has not obtained from the out-of-state jurisdiction that imposed the sentence or sanction under which the prisoner will be confined in this state a copy of the institutional record of the prisoner while previously confined in that out-of-state jurisdiction or a statement that the prisoner previously has not been confined in that out-of-state jurisdiction and a copy of all medical records pertaining to that prisoner that are in the possession of the out-of-state jurisdiction.

(b) The prisoner, while confined in any out-of-state jurisdiction, has a record of institutional violence involving the use of a deadly weapon or a pattern of committing acts of an assaultive nature against employees of, or visitors to, the place of confinement or has a record of escape or attempted escape from secure custody.

(c) Under the security classification system and schedule adopted by the department of rehabilitation and correction under **section 5145.03** of the Revised Code and adopted by the private contractor under division (B)(10) of this section, the out-of-state prisoner would be classified as being at a security level higher than medium security.

(12) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into a written agreement with the department of rehabilitation and correction that sets forth a plan and procedure that will be used to coordinate law enforcement activities of state law enforcement agencies and of local law enforcement agencies with jurisdiction over the place at which the facility is located in response to any riot, rebellion, escape, insurrection, or other emergency occurring inside or outside the facility;

(13) A requirement that the private contractor cooperate with the correctional institution inspection committee in the committee's performance of its duties under **section 103.73** of the Revised Code and provide the committee, its subcommittees, and its staff members, in performing those duties, with access to the correctional facility as described in that section;

(14) A requirement that the private contractor permit any peace officer who serves a law enforcement agency with jurisdiction over the place at which the correctional facility is located to enter into the facility to investigate any criminal offense or delinquent act that allegedly has been committed in or on the grounds of, or otherwise in connection with, the facility;

(15) A requirement that the private contractor will not employ any person at the correctional facility until after the private contractor has submitted to the bureau of criminal identification and investigation, on a form prescribed by the superintendent of the bureau, a request that the bureau conduct a criminal records check of the person and a requirement that the private contractor will not employ any person at the facility if the records check or other information possessed by the contractor indicates that the person previously has engaged in malfeasance;

(16) A requirement that the private contractor will not accept for housing, and will not house, in the correctional facility any out-of-state prisoner unless the private contractor and the out-of-state jurisdiction that imposed the sentence for which the prisoner is to be confined agree that, if the out-of-state prisoner is confined in the facility in this state, commits a criminal offense while confined in the facility, is convicted of or pleads guilty to that offense, and is sentenced to a term of confinement for that offense but is not sentenced to death for that offense, the private contractor and the out-of-state jurisdiction will do all of the following:

(a) Unless **section 5120.50** of the Revised Code does not apply in relation to the offense the prisoner committed while confined in this state and the term of confinement imposed for that offense, the out-of-state jurisdiction will accept the prisoner pursuant to that section for service of that term of confinement and for any period of time remaining under the sentence for which the prisoner was confined in the facility in this state, the out-of-state jurisdiction will confine the prisoner pursuant to that section for that term and that remaining period of time, and the private contractor will transport the prisoner to the out-of-state jurisdiction for service of that term and that remaining period of time.

(b) If **section 5120.50** of the Revised Code does not apply in relation to the offense the prisoner committed while confined in this state and the term of confinement imposed for that offense, the prisoner shall be returned to the out-of-state jurisdiction or its private contractor for completion of the period of time remaining under the out-of-state sentence for which the prisoner was confined in the facility in this state before starting service of the term of confinement imposed for the offense committed while confined in this state, the out-of-state jurisdiction or its private contractor will confine the prisoner for that remaining period of time and will transport the prisoner outside of this state for service of that remaining period of time, and, if the prisoner is confined in this state in a facility operated by the department of rehabilitation and correction, the private contractor will be financially responsible for reimbursing the department at the per diem cost of confinement for the duration of that incarceration, with the amount of the reimbursement so paid to be deposited in the department's prisoner programs fund.

(17) A requirement that the private contractor, prior to housing any out-of-state prisoner in the correctional facility under the contract, enter into an agreement with the local public entity that sets forth a conversion plan that will be followed if, for any reason, the facility is closed or ceases to operate. The conversion plan shall include, but is not limited to, provisions that specify whether the private contractor, the local public entity, or the out-of-state jurisdictions that imposed the sentences for which the out-of-state prisoners are confined in the facility will be responsible for housing and transporting the prisoners who are in the facility at the time it is closed or ceases to operate and for the cost of so housing and transporting those prisoners.

(18) A schedule of fines that the local public entity shall impose upon the private contractor if the private contractor fails to perform its contractual duties, and a requirement that, if the private contractor fails to perform its contractual duties, the local public entity shall impose a fine on the private contractor from the schedule of fines and, in addition to the fine, may exercise any other rights it has under the contract. Division (F)(2) of this section applies regarding a fine described in this division.

(19) A requirement that the private contractor adopt and use in the correctional facility the drug testing and treatment program that the department of rehabilitation and correction uses for inmates in state correctional institutions;

(20) A requirement that the private contractor provide clothing for all out-of-state prisoners housed in the correctional facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as a prisoner, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-prisoners, that the private contractor require all out-of-state prisoners housed in the facility to wear the clothing so provided, and that the private contractor not permit any out-of-state prisoner, while inside or on the premises of the facility or while being transported to or from the facility, to wear any clothing of a nature that does not conspicuously identify its wearer as a prisoner and that normally is worn outside the facility by non-prisoners;

(21) A requirement that, at the time the contract is made, the private contractor provide to all parties to the contract adequate proof that it has complied with the requirement described in division (D)(9) of this section, and a requirement that, at any time during the term of the contract, the private contractor upon request provide to any party to the contract adequate proof that it continues to be in compliance with the requirement described in division (D)(9) of this section.

(E) A private correctional officer or other designated employee of a private contractor that operates a correctional facility that houses out-of-state prisoners in this state under a contract entered into prior to, on, or after March 17, 1998, may carry and use firearms in the course of the officer's or employee's employment only if the officer or employee is certified as having satisfactorily completed an approved training program designed to qualify persons for positions as special police officers, security guards, or persons otherwise privately employed in a police capacity, as described in division (A) of **section 109.78** of the Revised Code.

(F) (1) Upon notification by the private contractor of an escape from, or of a disturbance at, a correctional facility that is operated by a private contractor under a contract entered into prior to, on, or after March 17, 1998, and that houses out-of-state prisoners in this state, the department of rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture persons who escaped from the facility or quell any disturbance at the facility, in accordance with the plan and procedure included in the written agreement entered into under division (D)(12) of this section in relation to contracts entered into on or after March 17, 1998, and in accordance with their normal procedures in relation to contracts entered into prior to March 17, 1998. Any cost incurred by this state or a political subdivision of this state relating to the apprehension of a person who escaped from the facility, to the quelling of a disturbance at the facility, or to the investigation or prosecution as described in division (G)(2) of this section of any offense relating to the escape or disturbance shall be chargeable to and borne by the private contractor. The contractor also shall reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of a person who escaped from the facility, following the person's recapture.

(2) If a private contractor that, on or after March 17, 1998, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners fails to perform its contractual duties, the local public entity shall impose upon the private contractor a fine from the schedule of fines included in the contract and may exercise any other rights it has under the contract. A fine imposed under this division shall be paid to the local public entity that enters into the contract, and the local public entity shall deposit the money so paid into its treasury to the credit of the fund used to pay for community policing. If a fine is imposed under this division, the local public entity may reduce the payment owed to the private contractor pursuant to any invoice in the amount of the fine.

(3) If a private contractor, on or after March 17, 1998, enters into a contract under this section with a local public entity for the operation of a correctional facility that houses out-of-state prisoners in this state, the private contractor shall comply with the insurance, indemnification, hold harmless, and cost reimbursement provisions described in division (D)(9) of this section.

(G) (1) Any act or omission that would be a criminal offense or a delinquent act if committed at a state correctional institution or at a jail, workhouse, prison, or other correctional facility operated by this state or by any political subdivision or group of political subdivisions of this state shall be a criminal offense or delinquent act if committed by or with regard to any out-of-state prisoner who is housed at any correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after March 17, 1998.

(2) If any political subdivision of this state experiences any cost in the investigation or prosecution of an offense committed by an out-of-state prisoner housed in a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, the private contractor shall reimburse the political subdivision for the costs so experienced.

(3) (a) Except as otherwise provided in this division, the state, and any officer or employee, as defined in **section 109.36** of the Revised Code, of the state is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity and an out-of-state jurisdiction, a local public entity and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to March 17, 1998, or that is entered into on or after March 17, 1998, in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an officer or employee, as defined in **section 109.36** of the Revised Code, of the state that is manifestly outside the scope of the officer's or employee's official responsibilities or regarding an act or omission of the state, or of an officer or employee, as so defined, of the state that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(b) Except as otherwise provided in this division, a non-contracting political subdivision, and any employee, as defined in **section 2744.01** of the Revised Code, of a non-contracting political subdivision is not liable in damages in a civil action for any injury, death, or loss to person or property that allegedly arises from, or is related to, the establishment, management, or operation of a correctional facility to house out-of-state prisoners in this state pursuant to a contract between a local public entity other than the non-contracting political subdivision and an out-of-state jurisdiction, a local public entity other than the non-contracting political subdivision and a private contractor, or a private contractor and an out-of-state jurisdiction that was entered into prior to March 17, 1998, or that is entered into on or after March 17, 1998, in accordance with its provisions. The immunity provided in this division does not apply regarding an act or omission of an employee, as defined in **section 2744.01** of the Revised Code, of a non-contracting political subdivision that is manifestly outside the scope of the employee's employment or official responsibilities or regarding an act or omission of a non-contracting political subdivision or an employee, as so defined, of a non-contracting political subdivision that is undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) Divisions (G)(3)(a) and (b) of this section do not affect any immunity or defense that the state and its officers and employees or a non-contracting political subdivision and its employees may be entitled to under another section of the Revised Code or the common law of this state, including, but not limited to, **section 9.86** or **Chapter 2744.** of the Revised Code.

(H) (1) Upon the completion of an out-of-state prisoner's term of detention at a correctional facility operated by a private contractor in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, the operator of the correctional facility shall transport the prisoner to the out-of-state jurisdiction that imposed the sentence for which the prisoner was confined before it releases the prisoner from its custody.

(2) No private contractor that operates and manages a correctional facility housing out-of-state prisoners in this state pursuant to a contract entered into prior to, on, or after March 17, 1998, shall fail to comply with division (H)(1) of this section.

(3) Whoever violates division (H)(2) of this section is guilty of a misdemeanor of the first degree.

(I) Except as otherwise provided in this division, the provisions of divisions (A) to (H) of this section apply in relation to any correctional facility operated by a private contractor in this state to house out-of-state prisoners, regardless of whether the facility is operated pursuant to a contract entered into prior to, on, or after March 17, 1998. Division (C)(1) of this section shall not apply in relation to any correctional facility for housing out-of-state prisoners in this state that is operated by a private contractor under a contract entered into with a local public entity prior to March 17, 1998. If a private contractor operates a correctional facility in this state for the housing of out-of-state prisoners under a contract entered into with a local public entity prior to March 17, 1998, no later than thirty days after the effective date of this amendment, the private contractor shall enter into a contract with the local public entity that comports to the requirements and criteria of division (D) of this section.

HISTORY: 147 v H 293 (Eff 3-17-98); 148 v H 283. Eff 6-30-99.

ATTACHMENT B

§ 9.06. Contracts for private operation and management of correctional facilities.

(A) (1) The department of rehabilitation and correction shall contract for the private operation and management pursuant to this section of the initial intensive program prison established pursuant to **section 5120.033 [5120.03.3]** of the Revised Code and may contract for the private operation and management of any other facility under this section. Counties and municipal corporations to the extent authorized in **sections 307.93, 341.35, 753.03, and 753.15** of the Revised Code, may contract for the private operation and management of a facility under this section. A contract entered into under this section shall be for an initial term of not more than two years, with an option to renew for additional periods of two years.

(2) The department of rehabilitation and correction, by rule, shall adopt minimum criteria and specifications that a person or entity, other than a person or entity that satisfies the criteria set forth in division (A)(3)(a) of this section and subject to division (I) of this section, must satisfy in order to apply to operate and manage as a contractor pursuant to this section the initial intensive program prison established pursuant to **section 5120.033 [5120.03.3]** of the Revised Code.

(3) Subject to division (I) of this section, any person or entity that applies to operate and manage a facility as a contractor pursuant to this section shall satisfy one or more of the following criteria:

(a) The person or entity is accredited by the American correctional association and, at the time of the application, operates and manages one or more facilities accredited by the American correctional association.

(b) The person or entity satisfies all of the minimum criteria and specifications adopted by the department of rehabilitation and correction pursuant to division (A)(2) of this section, provided that this alternative shall be available only in relation to the initial intensive program prison established pursuant to **section 5120.033 [5120.03.3]** of the Revised Code.

(4) Subject to division (I) of this section, before a public entity may enter into a contract under this section, the contractor shall convincingly demonstrate to the public entity that it can operate the facility with the inmate capacity required by the public entity and provide the services required in this section and realize at least a five per cent savings over the projected cost to the public entity of providing these same services to operate the facility that is the subject of the contract. No out-of-state prisoners may be housed in any facility that is the subject of a contract entered into under this section.

(B) Subject to division (I) of this section, any contract entered into under this section shall include all of the following:

(1) A requirement that the contractor retain the contractor's accreditation from the American correctional association throughout the contract term or, if the contractor applied pursuant to division (A)(3)(b) of this section, continue complying with the applicable criteria and specifications adopted by the department of rehabilitation and correction pursuant to division (A)(2) of this section;

(2) A requirement that all of the following conditions be met:

(a) The contractor begins the process of accrediting the facility with the American correctional association no later than sixty days after the facility receives its first inmate.

(b) The contractor receives accreditation of the facility within twelve months after the date the contractor applies to the American correctional association for accreditation.

(c) Once the accreditation is received, the contractor maintains it for the duration of the contract term.

(d) If the contractor does not comply with divisions (B)(2)(a) to (c) of this section, the contractor is in violation of the contract and the public entity may revoke the contract at its discretion.

(3) A requirement that the contractor comply with all rules promulgated by the department of rehabilitation and correction that apply to the operation and management of correctional facilities, including the minimum standards for jails in Ohio and policies regarding the use of force and the use of deadly force, although the public entity may require more stringent standards, and comply with any applicable laws, rules, or regulations of the federal, state, and local governments, including, but not limited to, sanitation, food service, safety, and health regulations. The contractor shall be required to send copies of reports of inspections completed by the appropriate authorities regarding compliance with rules and regulations to the director of rehabilitation and correction or the director's designee and, if contracting with a local public entity, to the governing authority of that entity.

(4) A requirement that the contractor report for investigation all crimes in connection with the facility to the public entity, to all local law enforcement agencies with jurisdiction over the place at which the facility is located, and, for a crime committed at a state correctional institution, to the state highway patrol;

(5) A requirement that the contractor immediately report all escapes from the facility, and the apprehension of all escapees, by telephone and in writing to all local law enforcement agencies with jurisdiction over the place at which the facility is located, to the prosecuting attorney of the county in which the facility is located, to the state highway patrol, to a daily newspaper having general circulation in the county in which the facility is located and, if the facility is a state correctional institution, to the department of rehabilitation and correction. The written notice may be by either facsimile transmission or mail. A failure to comply with this requirement regarding an escape is a violation of **section 2921.22** of the Revised Code.

- (6) A requirement that, if the facility is a state correctional institution, the contractor provide a written report within specified time limits to the director of rehabilitation and correction or the director's designee of all unusual incidents at the facility as defined in rules promulgated by the department of rehabilitation and correction or, if the facility is a local correctional institution, that the contractor provide a written report of all unusual incidents at the facility to the governing authority of the local public entity;
- (7) A requirement that the contractor maintain proper control of inmates' personal funds pursuant to rules promulgated by the department of rehabilitation and correction, for state correctional institutions, or pursuant to the minimum standards for jails along with any additional standards established by the local public entity, for local correctional institutions, and that records pertaining to these funds be made available to representatives of the public entity for review or audit;
- (8) A requirement that the contractor prepare and distribute to the director of rehabilitation and correction or, if contracting with a local public entity, to the governing authority of the local entity, annual budget income and expenditure statements and funding source financial reports;
- (9) A requirement that the public entity appoint and supervise a full-time contract monitor, that the contractor provide suitable office space for the contract monitor at the facility, and that the contractor allow the contract monitor unrestricted access to all parts of the facility and all records of the facility except the contractor's financial records;
- (10) A requirement that if the facility is a state correctional institution, designated department of rehabilitation and correction staff members be allowed access to the facility in accordance with rules promulgated by the department;
- (11) A requirement that the contractor provide internal and perimeter security as agreed upon in the contract;
- (12) If the facility is a state correctional institution, a requirement that the contractor impose discipline on inmates housed in a state correctional institution, only in accordance with rules promulgated by the department of rehabilitation and correction;
- (13) A requirement that the facility be staffed at all times with a staffing pattern approved by the public entity and adequate both to ensure supervision of inmates and maintenance of security within the facility, and to provide for programs, transportation, security, and other operational needs. In determining security needs, the contractor shall be required to consider, among other things, the proximity of the facility to neighborhoods and schools.
- (14) If the contract is with a local public entity, a requirement that the contractor provide services and programs, consistent with the minimum standards for jails promulgated by the department of rehabilitation and correction under **section 5120.10** of the Revised Code;
- (15) A clear statement that no immunity from liability granted to the state, and no immunity from liability granted to political subdivisions under **Chapter 2744.** of the Revised Code, shall extend to the contractor or any of the contractor's employees;

(16) A statement that all documents and records relevant to the facility shall be maintained in the same manner required for, and subject to the same laws, rules, and regulations as apply to, the records of the public entity;

(17) Authorization for the public entity to impose a fine on the contractor from a schedule of fines included in the contract for the contractor's failure to perform its contractual duties, or to cancel the contract, as the public entity considers appropriate. If a fine is imposed, the public entity may reduce the payment owed to the contractor pursuant to any invoice in the amount of the imposed fine.

(18) A statement that all services provided or goods produced at the facility shall be subject to the same regulations, and the same distribution limitations, as apply to goods and services produced at other correctional institutions;

(19) Authorization for the department to establish one or more prison industries at a facility operated and managed by a contractor for the department;

(20) A requirement that, if the facility is an intensive program prison established pursuant to **section 5120.033** [5120.03.3] of the Revised Code, the facility shall comply with all criteria for intensive program prisons of that type that are set forth in that section;

(21) If the institution is a state correctional institution, a requirement that the contractor provide clothing for all inmates housed in the facility that is conspicuous in its color, style, or color and style, that conspicuously identifies its wearer as an inmate, and that is readily distinguishable from clothing of a nature that normally is worn outside the facility by non-inmates, that the contractor require all inmates housed in the facility to wear the clothing so provided, and that the contractor not permit any inmate, while inside or on the premises of the facility or while being transported to or from the facility, to wear any clothing of a nature that does not conspicuously identify its wearer as an inmate and that normally is worn outside the facility by non-inmates.

(C) No contract entered into under this section may require, authorize, or imply a delegation of the authority or responsibility of the public entity to a contractor for any of the following:

(1) Developing or implementing procedures for calculating inmate release and parole eligibility dates and recommending the granting or denying of parole, although the contractor may submit written reports that have been prepared in the ordinary course of business;

(2) Developing or implementing procedures for calculating and awarding earned credits, approving the type of work inmates may perform and the wage or earned credits, if any, that may be awarded to inmates engaging in that work, and granting, denying, or revoking earned credits;

(3) For inmates serving a term imposed for a felony offense committed prior to July 1, 1996, or for a misdemeanor offense, developing or implementing procedures for calculating and awarding good time, approving the good time, if any, that may be awarded to inmates engaging in work, and granting, denying, or revoking good time;

(4) For inmates serving a term imposed for a felony offense committed on or after July 1, 1996, extending an inmate's term pursuant to the provisions of law governing bad time;

(5) Classifying an inmate or placing an inmate in a more or a less restrictive custody than the custody ordered by the public entity;

(6) Approving inmates for work release;

(7) Contracting for local or long distance telephone services for inmates or receiving commissions from those services at a facility that is owned by or operated under a contract with the department.

(D) A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized services, as described in division (I) of this section, relative to an intensive program prison established pursuant to **section 5120.033** [5120.03.3] of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall provide an adequate policy of insurance specifically including, but not limited to, insurance for civil rights claims as determined by a risk management or actuarial firm with demonstrated experience in public liability for state governments. The insurance policy shall provide that the state, including all state agencies, and all political subdivisions of the state with jurisdiction over the facility or in which a facility is located are named as insured, and that the state and its political subdivisions shall be sent any notice of cancellation. The contractor may not self-insure.

A contractor that has been approved to operate a facility under this section, and a person or entity that enters into a contract for specialized services, as described in division (I) of this section, relative to an intensive program prison established pursuant to **section 5120.033** [5120.03.3] of the Revised Code to be operated by a contractor that has been approved to operate the prison under this section, shall indemnify and hold harmless the state, its officers, agents, and employees, and any local government entity in the state having jurisdiction over the facility or ownership of the facility, shall reimburse the state for its costs in defending the state or any of its officers, agents, or employees, and shall reimburse any local government entity of that nature for its costs in defending the local government entity, from all of the following:

(1) Any claims or losses for services rendered by the contractor, person, or entity performing or supplying services in connection with the performance of the contract;

(2) Any failure of the contractor, person, or entity or its officers or employees to adhere to the laws, rules, regulations, or terms agreed to in the contract;

(3) Any constitutional, federal, state, or civil rights claim brought against the state related to the facility operated and managed by the contractor;

(4) Any claims, losses, demands, or causes of action arising out of the contractor's, person's, or entity's activities in this state;

(5) Any attorney's fees or court costs arising from any habeas corpus actions or other inmate suits that may arise from any event that occurred at the facility or was a result of such an event, or arise over the conditions, management, or operation of the facility, which fees and costs shall include, but not be limited to, attorney's fees for the state's representation and for any court-appointed representation of any inmate, and the costs of any special judge who may be appointed to hear those actions or suits.

(E) Private correctional officers of a contractor operating and managing a facility pursuant to a contract entered into under this section may carry and use firearms in the course of their employment only after being certified as satisfactorily completing an approved training program as described in division (A) of **section 109.78** of the Revised Code.

(F) Upon notification by the contractor of an escape from, or of a disturbance at, the facility that is the subject of a contract entered into under this section, the department of rehabilitation and correction and state and local law enforcement agencies shall use all reasonable means to recapture escapees or quell any disturbance. Any cost incurred by the state or its political subdivisions relating to the apprehension of an escapee or the quelling of a disturbance at the facility shall be chargeable to and borne by the contractor. The contractor shall also reimburse the state or its political subdivisions for all reasonable costs incurred relating to the temporary detention of the escapee following recapture.

(G) Any offense that would be a crime if committed at a state correctional institution or jail, workhouse, prison, or other correctional facility shall be a crime if committed by or with regard to inmates at facilities operated pursuant to a contract entered into under this section.

(H) A contractor operating and managing a facility pursuant to a contract entered into under this section shall pay any inmate workers at the facility at the rate approved by the public entity. Inmates working at the facility shall not be considered employees of the contractor.

(I) In contracting for the private operation and management pursuant to division (A) of this section of the initial intensive program prison established pursuant to **section 5120.033** [5120.03.3] of the Revised Code or of any other intensive program prison established pursuant to that section, the department of rehabilitation and correction may enter into a contract with a contractor for the general operation and management of the prison and may enter into one or more separate contracts with other persons or entities for the provision of specialized services for persons confined in the prison, including, but not limited to, security or training services or medical, counseling, educational, or similar treatment programs. If, pursuant to this division, the department enters into a contract with a contractor for the general operation and management of the prison and also enters into one or more specialized service contracts with other persons or entities, all of the following apply:

(1) The contract for the general operation and management shall comply with all requirements and criteria set forth in this section, and all provisions of this section apply in relation to the prison operated and managed pursuant to the contract.

(2) Divisions (A)(2), (B), and (C) of this section do not apply in relation to any specialized services contract, except to the extent that the provisions of those divisions clearly are relevant to the specialized services to be provided under the specialized services contract. Division (D) of this section applies in relation to each specialized services contract.

(J) As used in this section:

(1) "Public entity" means the department of rehabilitation and correction, or a county or municipal corporation or a combination of counties and municipal corporations, that has jurisdiction over a facility that is the subject of a contract entered into under this section.

(2) "Local public entity" means a county or municipal corporation, or a combination of counties and municipal corporations, that has jurisdiction over a jail, workhouse, or other correctional facility used only for misdemeanants that is the subject of a contract entered into under this section.

(3) "Governing authority of a local public entity" means, for a county, the board of county commissioners; for a municipal corporation, the legislative authority; for a combination of counties and municipal corporation/D, all the boards of county commissioners and municipal legislative authorities that joined to create the facility.

(4) "Contractor" means a person or entity that enters into a contract under this section to operate and manage a jail, workhouse, or other correctional facility.

(5) "Facility" means the specific county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other type of correctional institution or facility used only for misdemeanants, or a state correctional institution, that is the subject of a contract entered into under this section.

(6) "Person or entity" in the case of a contract for the private operation and management of a state correctional institution, includes an employee organization, as defined in section 4117.01 of the Revised Code, that represents employees at state correctional institutions.

HISTORY: 146 v H 117 (Eff 9-29-95); 147 v H 215 (Eff 9-29-97); 147 v H 293 (Eff 3-17-98); 148 v H 283 (Eff 6-30-99); 149 v H 94. Eff 9-5-2001.